IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2516 OF 2005

Karnataka State Road Transport
Corporation, Banglore ...Appellant

Vs.

Chaya Chandrakant Patil & Anr. ...Respondents

Mr.C.M.Lokesh for the Appellant
Mr.Dilip Bodke for Respondent Nos.1,2,5 and 6.

CORAM: A.S.OKA, J.

DATED: MARCH 18,2006.

P.C.:

1. Heard Advocates for the parties. The Appellant is the Karnataka State Road Transport Corporation. The Respondent Nos.1 and 2 are the original claimants in a Claim Petition under Section 166 of the Motor Vehicles Act, 1988. The Respondent No.1 is the widow of the deceased and the Respondent No.2 is the minor son of the deceased.

2. The accident occurred on 21st November 1995. The deceased was working as a cleaner on a truck and was travelling in the said truck from Banglore towards Chiplun. At about 2.00 a.m., the bus owned by the Appellant-Corporation came from opposite side in a great speed and collided head on with the truck. Chandrakant, the husband of the Respondent No.1 succumbed to the head injury sustained in the accident. The Tribunal has awarded compensation of Rs.1,40,000/- together with interest at the rate of 6% p.a.

3. The learned advocate for the Appellant submitted that the

accident occurred due to negligence on the part of the driver of the truck and the finding recorded by the Tribunal that the driver of the bus was negligent is contrary to the evidence. He submitted that as the deceased was in the employment, the Tribunal could not have taken notional annual income of Rs.15,000/- as the income for calculating the damages. He submitted that the income of the deceased was only Rs.700/- to 800/- p.m. He submitted that the multiplier of 12 adopted is on the higher side. The learned Advocate for the original claimants supported the impugned Judgment and Award.

4. It is an admitted position that certain claim petitions were filed arising out the same accident in the Motor Accident Claims Tribunal at Hubli, State of Karnataka. While deciding the Claim Petitions, the said Tribunal came to the conclusion that the accident occurred due to negligence on the part of the driver of the bus owned by the Appellant. It is an admitted position that the Awards passed by the Tribunal have been confirmed by the Karnataka High Court and the decision of the Tribunal has attained finality. Thus the finding of negligence against the driver of the Appellant's bus has been confirmed by the Karnataka High Court. If this the position, no fault can be found with the finding of the Tribunal in the present case that the accident occurred solely due to negligence of the driver of the Appellant.

6. Coming to the quantum of the compensation, the Tribunal

has noted that the father of the deceased has deposed that the deceased was drawing Rs.1500/- to Rs.2000/- p.m. The Tribunal, however, held that as the employer has not been examined and there is no clear evidence of income. There does not seem to be any dispute that the deceased was working as a Cleaner. In fact, the submission of the Appellant-Corporation appears to be that as the deceased was employed and was earning income, notional annual income as per the structured formula should not be taken as basis for calculating the damages.

7. It is well settled that in a matter of calculating damages in case of a fatal accident, there is bound to be some element of guess work. As the Tribunal has taken annual income at Rs.15,000/-, the monthly income comes to Rs.1250/-. The case of the claimants is that the deceased was drawing the salary of Rs.1500/- to Rs.2000/- p.m. Considering the fact that the deceased was employed as a Cleaner it is not unreasonable to take his monthly income at Rs.1250/-. By taking Rs.1250/- p.m. deduction of one third has been ordered by the Tribunal and multiplier of 12 has been applied by the Tribunal. The age of the deceased was about 30 years. In a recent decision of the Apex Court, for the same age group a multiplier of 13 has been applied. Considering all these factors, total compensation awarded of Rs.1,40,000/- appears to be just and reasonable. No interference is called for. First Appeal is dismissed with no order as to costs.

8. The learned Advocate for the Appellant pointed out that the Appellant has deposited a sum of Rs.25,000/- in this Court in compliance with the requirement of Section 173 of the Motor Vehicles Act, 1988. The said amount will be transferred by this court to the concerned Tribunal.

Judge.